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ABSTRACT

The purpose of this study was to investigate the proper procedures that must be followed in the dismissal of tenured faculty at a technical community college. While many resources on motivating and managing employees exist, little information is available pertaining to strategies for coping with unsatisfactory instructors who are unresponsive to counseling initiatives. Using a fictional case study as example, this study defines the types of procedures and documentation necessary to dismiss a tenured faculty member for incompetence at Renton Technical College (WA). The termination of a non-tenured instructor's contracts is relatively straightforward, but the process for a tenured instructor is more complicated. Model vignettes between a fictional administrator, unsatisfactory faculty member and union representative are constructed in accordance with Frederick Hertzberg's Motivator-Hygiene theory and Renton Technical College's Tenure Review Committee Handbook. The resulting protocol suggests a multiple phase process in which the outcome is dependent on the decisions and behaviors of the instructor and administrator at each stage. The instructor is counseled, behavior is documented, a de-hiring proposal is developed ard, if necessary, a written report is submitted to the tenure review committee and the College's Board of Trustees. (SKF)

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ED 430 607

Dismissal of Tenured Faculty — the College Administrator's Ugly Responsibility

by

Gene E. Fusch

Abstract

A great deal of effort is placed on motivation and performance but little is written on the ugly responsibilities of managers: termination of employees. In the college arena, most faculty and staff endorse the college's mission or through good leadership and management practices may become inspired and support the college's mission. However, occasionally an individual may not be willing to support the college's mission to the detriment of the students. Through a fictional dialog between administration, faculty, and faculty union representatives, this paper addresses the documentation procedures and methods of firing tenured faculty when all positive methods fail.

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Dismissal of Tenured Faculty — the College Administrator's Ugly Responsibility

A majority of management and leadership resources cover information on motivating and managing employees. However, many of these same resources lack information pertaining strategies for coping with the employee that cannot motivated.

One such resource that effectively illustrates coping strategies is Steinmetz's book *Managing the Marginal and Unsatisfactory Performer*. He states that if the employee does not conform after counseling or motivation, there are methods the manager may use to terminate the marginal or unsatisfactory employee. Steinmetz also details the consequences obtained from de-hiring (encouraging employee to quit), transferring to another department, retiring, promoting, or firing the employee.

Regarding a marginal or unsatisfactory instructor in the community and technical college system, the administrator often has his/her options reduced due to tenure or probationary in a tenure track. After identifying the causes of the marginal or unsatisfactory instructor, the administrator can use the therapeutic counseling sessions. Due to the professional level of instructors in the system, the counseling sessions should use the Hygienic School, from Professor Frederick Hertzberg's theory, applying motivators such as recognition, self-esteem, and career development.

If all options have been acted upon and the unsatisfactory instructor does not improve, the administrator can terminate or fail to renew the non-tenured instructor's contract. The process is more involved if the instructor is a tenure probationary. In this case, the administrator must first document all efforts to counsel and assist the instructor, all of the instructor's unsatisfactory performances, and have enough material to convince the tenure review committee of the necessity for termination. After the administrator is prepared to terminate the instructor, he must develop a de-hiring proposal, taking both the de-hiring proposal and the termination package to the Vice President for Instruction and Vice President of Human Resources and Development for approval. After approval, the administrator then tactfully plans a meeting with the instructor and proposes the advantages of the instructor quitting. A de-hiring agreement (instructor quitting) is the best solution for firing a tenured instructor, for it can have a "keep quiet" agreement that would prevent unrest with other faculty and students, as well as allow the instructor to save face.

If the probationary instructor refuses to quit then, as explained in Renton Technical College's Tenure Review Committee Handbook, the administrator must call for a tenure review committee meeting. During the meeting, the administrator must present both a written and oral statement to the tenure review committee and probationary. A comprehensive committee report will be prepared by the tenure

review committee and submitted to the College's Board of Trusties for the final decision.

However, in the case of tenured instructors, the task is more difficult. This study investigates the proper procedures that must be followed for dismissal of tenured faculty.

According to the contract between Renton Technical College and the Renton Federation of Teachers, a tenured instructor can be dismissed for the following:

a. reduction in work force resulting from program demand, following these procedures (1991):

   1. Program seniority shall prevail for employees qualified for the position.
   2. Employees currently full-time shall be given first consideration for continued employment.
   3. Employees last laid off shall be the first rehired for the program.
   4. Employees shall remain in a designated rehiring pool for one (1) year should employment reverse itself and a vacancy occur. (p. 57)

b. Failure to follow the Washington Administrative Code (WAC) or the Revised Code of Washington (RCW).

c. Failure to follow college procedures. The college must provide the union with all procedures. However, if the union has not approved them in the contract, they are cause for a grievance in which the dismissed instructor

could end up being reinstated and compensated for earnings, benefits, and grievance cost.

An examination of the RCW 28B.50.873 referring to reduction in force of tenured or probationary faculty members due to financial emergency describes detailed procedures in which the governor or legislature gives instructions to the Washington State Board for Community and Technical Colleges (SBCTC). The SBCTC then informs each of the colleges the details regarding the financial cutbacks. The Board of Trustees for each college determines the faculty that will be dismissed. In addition, Renton Technical College has added a new section to the WAC. WAC 495E-400-060 states in detail how when not in conflict with RCW 28B.50.873 (1992) "the president shall determine which program(s) and/or support services are most necessary to maintain the educational mission of the college and where and when any reduction-in-force of tenured or probational faculty members will occur (p. 2)." To clarify WAC 495E-400-060, all the community and technical colleges in Washington State define administrative codes for their own colleges. When their codes are approved by the state, they become an official part of the Washington Administrative Code.

Other than a reduction in force, RCW 28B.50.861 stipulates that tenured or probationary faculty members can only be dismissed for sufficient cause. RCW 28B.50.862 (1969) further defines grounds for sufficient cause as "aiding and abetting or

participating in: (1) Any unlawful act of violence; (2) Any unlawful act resulting in destruction of community college property; or (3) Any unlawful interference with the orderly conduct of the educational process (p. 146)." Renton Technical College reinforced RCW 28B.50.862 in the new section WAC 495E-400-050 (1992). The college also added to the definition of sufficient cause; "conviction of a felony, sexual harassment, incompetence, failure to perform an assignment or duty required by law or contract or layoff and/or reduction-in-force (p. 2)."

For an administrator to dismiss a tenured instructor, the administrator must be able to clearly prove sufficient cause. A case of conviction for a felony, an unlawful act resulting in destruction of community college property, an unlawful interference with the orderly conduct of the educational process, failure to perform an assignment or duty required by law or contract, or perhaps sexual harassment may be straight forward and easy to document. However, in a case of incompetence, the administrator will have a more difficult situation and must clearly prove that his/her statement is factual and not just a judgement.

The following fictional case study defines the types of procedures and documentation necessary to dismiss a tenured faculty member for incompetence.

Introduction:

Jones: After several student and industry complaints, the new Dean, Bill Jones, is very concerned with the performance and competence of widget technology Instructor, John Smith. Jones reviews Smith's file, finding evidence showing fair performance for the past nineteen years at the college. Jones then develops an outline for documentation of Smith's ability and plans a strategy to motivate him.

Jones: Complaint verification: Jones interviews those students and industry representatives who have made the complaints. Their complaints state that graduating students are not properly prepared for the Widget Industry. For future referral, Jones summarizes his findings and puts them into Smith's file.

Jones: Advisory Committee contacts: Knowing that at times an advisory committee member may attempt to sabotage an instructors reputation in order to secure the instructional position for him/herself, Jones personally meets each advisory committee member at their workplace. He looks over their workplace and asks about the training John Smith's students are receiving. Several of the advisory committee members report that Smith is a terrific instructor, and has put out many excellent students in years past. They feel, however, that Smith has not kept up with the rapid changes in Widget technology, and is not properly training the students

for the current workplace. They have, in fact, had to contact another college program for many of their new hires. After finishing the interviews, Smith summarizes his findings and puts them in Smith's file.

Jones: Industry Contacts: Hypothesizing that Smith may be teaching outdated technology, Jones makes several personal visits to other Widget industry representatives in the area. He finds that the local companies are not hiring Smith's graduates unless they cannot find any better-trained people. These companies state that are finding that Smith's graduates are twenty years outdated, and need considerable additional training before they are successful as a Widget Technician. For future referral Jones summarizes his findings and puts them in Smith's file.

Jones: Survey other Widget Technology programs: Jones meets with the dean of a neighboring college that has a Widget Technology program spoken highly of by many others during prior interviews. Jones tours several of the college's programs and observes their Widget Technology Program. He makes tentative arrangements with both the dean and Widget Technology instructor to bring Smith for a visit, in order to share ideas.

Jones: Explores possibilities of inservice training: Through the industry contacts Jones has made, he locates a three week Widget Factory training program in Ohio that could help bring Smith up to date in Widget Technology.

Jones: Develops motivation plan: Jones develops a motivation plan, using the neighboring college for competition. Jones plans to use Hertzberg's Hygiene theory as motivation, by having Smith decide that his own program should be recognized as the best. The plan is to motivate Smith to make his own decision that he needs to upgrade his program by taking inservice training.

First meeting dialogue:

Jones: John, how are you doing?

Smith: Fine bill, except for all the extra paperwork administration is making us do this year.

Jones: I know. It seems the higher technology gets the more paperwork we have to do. I was on a tour at Tim-Buck-Two Community College last week and they have a neat Widget Technology program. Have you ever been over there?

Smith: I have not been over there since George Wilson retired twelve years ago. He was a great guy. I worked with him at a Widget shop forty years ago. You know, the young instructor they got over there now is into computers and high tech stuff, he is out of touch with the real world.

Jones: They sure seem to have alot of modern equipment.

Smith: Yes, some colleges seem to get more money for equipment. My meters are wearing out and I need new ones.

Jones: We ought to go over there and see how they are getting all that equipment. Maybe we could steal a good idea on how they are getting all the money.

Smith: I sure could use more money for my program.

Jones: Tell you what John, I will get you some release time and set up for you and I to go over there.

Smith: Sure, if I can get release time.

Jones: Okay, I will set it up and let you know. I have to get to the instruction meeting, I will catch you latter.

Jones calls Smith:

Jones: John, I set up a tour for next Thursday at nine a.m., over at Tim-Buck-Two Community College. I can get a substitute in for the entire morning and buy you lunch after we are done over there. Do you want to go?

Smith: Sure, I never turn down a free lunch.

Jones: Great. I will pick you up at eight-thirty.

Smith: Okay.

Jones: Talk to you later, bye.

Smith: Bye.

Tour of Widget Technology Program at Tim-Buck-Two Community College:

Jones and Smith tour the program. Jones asks to see the student placement records, which show placement of over ninety percent over the past several years. Jones and Smith observe several state of the art instruments and computer programs for the Widget industry. The instructor tells Jones and Smith that the industry has assisted him in acquiring much of the equipment. Smith is polite and asks few questions. Jones asks the instructor how he has kept up with all this advanced technology. The instructor replies that he has been teaching for twelve years now, and three years ago he attended an excellent three week Widget factory training course in Ohio to update himself with the rapid changes in technology. Smith remains quiet, but thinks to himself that he's only got six years to retirement and is glad that he doesn't have to worry about all this high-tech stuff. Jones and Smith thank the Tim-Buck-Two Community College instructor for the enlightening tour and head off for lunch.

Second meeting during lunch:

Jones: John, what did you think of his program?

Smith: He is a little heavy into computers and stuff.

Jones: What do you mean?

Smith: Well, he has all that high tech stuff, but he has lost touch with reality.

Jones: Didn't he say he has a lot of industry support?

Smith: Yes, but he is not teaching for the real world.

Jones: His program sure looks impressive with the high tech equipment though.

Smith: Sure does. It probably dazzles the Widget industry people.

Jones: Didn't his records show ninety- percent placement for the last few years?

Smith: Yes.

Jones: If we could get the funding, would you like to get some fancier equipment?

Smith: That what I been asking for. I need new test meters.

Jones: Okay, figure out what you need and I will try to get the funding for you.

Smith: Great. (Smith thinks to himself: I want my new test meters but I do not want any of that computer junk.)

Jones: Well, let us get back to school.

Smith: Okay.

Third meeting one week later:

Jones: Hi, John. How are things going?

Smith: Okay.

Jones: That was a fun tour last week wasn't it?

Smith: It was okay.

Jones: Have you decided what you need in the way of new equipment?

Smith: I am working on it. I will have it to you by next week.

Jones: That is fine. Let us get together next Wednesday morning before my budget meeting.

Smith: Okay.

Jones: What is your student placement running?

Smith: It is about forty percent.

Jones: We are better than Tim-Buck-Two Community College, but they have ninety- percent placement.

Smith: Yes, but he's out of touch with reality.

Jones: Would you like to have that type of placement?

Smith: Sure.

Jones: What could we do to beat them?

Smith: I do not know. (Smith thinks to himself: I wish Bill would leave it alone. Things have ran fine the old way for nineteen years and surely can for six more.)

Jones: Well, give it some thought and we can talk later.

Smith: Okay.

Jones: See you next Wednesday.

Smith: Okay.

The fourth meeting:

Jones: Hi, John. Do you have your purchase request ready for your new equipment?

Smith: Here it is.

Jones: All you have is some test meters and three new Widget Dollies.

Smith: That is all I need.

Jones: Don't you need a computer system with some of the new Widget testing software?

Smith: No, I teach for the real world.

Jones: Have you given any thought of how you could improve your student placement and beat Tim-Buck-Two Community College?

Smith: You know, John, I have been teaching my program for nineteen years and my program is the best there is.

Jones: It appears that the industry is requiring computers in the workplace. Why don't we get you some?

Smith: I don't want any.

Jones: Have you ever used one of the new computer programs?

Smith: No!

Jones: If you would like to, I can approve a tuition waver and get you into one of our computer classes.

Smith: No! I have six years until retirement and I do not want to mess around with something that I do not need.

Jones: Would you like to take the Widget factory training program in Ohio if I could get the college to pay for it?

Smith: No! I do not want to mess with all the new high tech stuff.

Jones: Don't you want to improve your student placement and be better than Tim-Buck-Two Community College?

Smith: I think my students are better.

Jones: Then why do you have only forty- percent placement?

Smith: Because administration gives me to much paper work to do and I do not have time to call on industry contacts.

Jones: Everybody has too much paperwork, but if we are not placing our students, there must be a reason. Why don't you check into it and see if you can think of a way to improve your student placement?

Smith: Okay.

Jones: Think about taking a computer class and the industry class in Ohio too.

Smith: I will think about, but I do not want to take any classes.

Jones: Okay, just think about it and let's get together on Friday morning.

Smith: Okay, see you Friday.

John Smith seeks supporting colleague Jim Doe, Thing-a-ma-jig Technology instructor:

Smith: Hi, Jim. Can I talk to you a few minutes?

Doe: Sure, John. What's up?

Smith: Bill is harassing me, he wants me to take a computer class and a class in Ohio for three weeks.

Doe: Did he say you have to?

Smith: No, but he is really pressuring me to take them. I have been teaching here for nineteen years, he comes in and after a few months expects me to change the way I teach.

Doe: You have heard of the Peter Principle. Seems like if someone cannot teach, they make an administrator out of him.

Smith: Yes, this seems like a textbook case of the Peter Principle.

Doe: You probably better talk to the Union so if he gives any flack they can step in and stop him from harassing you.

Smith: Thanks for the support. He really has me stressed out. I am going to talk to Bob Brown (Union Rep). I have to get back to my class. I will talk to you later.

Doe: Okay, good luck!

John Smith meets with Bob Brown (Union Rep.):

Smith: Bob, Bill Jones is harassing me.

Brown: How?

Smith: I have been teaching here successfully for nineteen years and now he comes in and wants me to change my entire program.

Brown: What is he want you to do?

Smith: He took me on a tour at Tim-Buck-Two Community College's Widget Technology Program and he wants me to teach like they do.

Brown: Is he telling you that you have to teach the way they do?

Smith: No, but he is pressuring me to take a computer class, a three week Widget Factory class in Ohio and wants me to teach computers in my classroom. I have done my job well for nineteen years and was a top Widget Technician for twenty-two years before that. I was fixing Widgets when he was still in diapers.

Brown: Okay, if he pressures you any more, you have a right to stop the meeting right at that time and request it be rescheduled for when I can be there to represent you.

Smith: Great. If he starts to pressure me again, I will stop the meeting until you can be present. I am meeting with him Friday morning and will let you know how it goes.

Brown: Good luck, John. I will wait to hear from you.

The fifth meeting:

Jones: Good morning, John. How are you today?

Smith: Fine.

Jones: Have you thought of any ideas that can help improve your student placement?

Smith: No, but I am working on it.

Jones: Great! I checked and there is a computer class starting next quarter on Mondays and Wednesdays directly after your class is over. Would you like me to schedule you for it?

Smith: No!

Jones: Would you be willing to take it at another time?

Smith: No!

Jones: Would you be interested in taking the Widget Factory class in Ohio?

Smith: No!

Jones: Don't you want to have a better program than Tim-Buck-Two Community College?

Smith: My program is already better.

Jones: Let me lay it on the line John. They have ninety- percent student placement, you have forty percent. They have terrific industry support, you have no industry support. In fact, I have received several complaints from past students and industry about the fact that your graduating students are not prepared for the workplace.

Smith: What are you saying?

Jones: I didn't want to have to put it this way, John, but you are teaching out dated methods and need to take some inservice to upgrade yourself. I am willing to help all I can, but you need to take some classes.

Smith: Bull! You are way off base and I am not going to discuss this anymore without Bob Brown here.

Jones: I am sorry you feel that way, John. Let me call Bob and schedule a meeting with the three of us.

Smith: Okay!

Bill Jones schedules a meeting with Bob Brown (Union Rep.) and John Smith:

Jones: Hello, Bob, John. Have a seat.

Brown: Hello, Bill. I have been talking to John about your meeting with him last Friday, and I am puzzled. Can you tell me what's going on?

Jones: Sure, Bob. First of all, let me state that I realize that John has worked hard to serve this college for the past nineteen years. Looking at John's records, he was one of the top technicians in the Widget industry when he came here. However, I have received several complaints from past students and the industry about the inadequate training they are receiving from John.

Brown: What do you mean by inadequate training?

Jones: The complaints and follow up I did clearly shows that John is teaching outdated methods and has not kept up with the advancements in Widget Technology.

Smith: I have taught this program for nineteen years, and my advisory committee has recognized my performance.

Jones: John, your advisory committee has dwindled over the past several years to a few of your long time friends in the industry.

Brown: Bill, what is your position?

Jones: John, you must upgrade yourself to teach at the current level of the Widget Industry. I will help you by waiving tuition for computer training and covering your expenses to attend the three week Widget Factory training class in Ohio. Brown: John and I do not feel that he needs any updating. In fact, you took him over to Tim-Buck-Two Community College's program in order to pressure John into using computer software.

Jones: I am sorry you feel that way, but John does need his competencies updated.

Brown: John is serving this college well and the Widget industry by teaching competency-based curriculum.

Jones: Apparently, we are getting nowhere. Why don't you two discuss my offer to help by waiving tuition for computer training and covering your

expenses to attend the three-week Widget Factory training class in Ohio. Let's meet Thursday morning and discuss John's decision.

Brown: Is that okay with you, John?

Smith: Yes, let's you and I talk.

Brown: Okay, we will meet with you Thursday morning.

Bob Brown explains the options to John Smith:

1. John could take the classes.
2. They could demand a meeting with the people who made the complaints.
3. They could file a grievance if Bill makes an ultimatum.
4. It is very difficult to dismiss a tenured instructor, and with John's nineteen years of service, it would be difficult for Bill to prove incompetence.
5. If Bill continues to harass or tries to dismiss John, they could claim age discrimination. However, it could be a long fight.
6. Bill might try to give John a different job, and he could decide at that time what he wants to do.
7. Though not very likely, Bill could be successful in dismissing John.

John decides he does not want to take any classes for he only has six years to retirement.

Bill Jones prepares all documentation of the meetings with the past students, advisory committee, Widget industry contacts, Tim-Buck-Two Community College's Widget Technology Program tour, and all the meetings with John Smith and Bob Brown. He develops a de-hiring (instructor quitting) proposal, taking both the de-hiring proposal and the termination package to the Vice President for Instruction and Vice President of Human Resources and Development for approval. After approval, Bill, figuring that John will not except his proposal for upgrading himself, tactfully plans the Thursday morning meeting to propose the advantages of John quitting.

Thursday morning meeting:

Jones: Hello, Bob and John, have a seat.

Jones: John, have you come to a decision about improving your competencies?

Brown: John and I have discussed this in great detail and we both feel that for some undisclosed reason you are coming down on John. He has only six years to retirement, has served this college well, and is very competent.

Jones: Is that how you feel John?

Smith: Yes.

Brown: Bill, let's drop it and let John get back to teaching his students.

Jones: John, you have six years left to retirement, and if you continue teaching, six more years of students will sit through your classes and not be

prepared to work in the Widget industry when they graduate. Therefore, I have come up with two options for you.

1. I am fully prepared to go to a tenure review committee and recommend that you be dismissed from the faculty at this college. The results will be the loss of your job for less than favorable conditions.

Smith: You've got to be crazy!

Brown: Bill it will be very hard for you to prove anything about John's competence and this could lead to a grievance for age discrimination.

Jones: With the documented statements and information from the Widget Industry, the tenure review committee will have no option but to recommend to the College Board to fire you, John. I have a second option for you:

2. You can quit. I will seal your file and no one will know of your incompetence. We will make a "keep quiet" agreement about the reasons you are leaving and all anyone will know is that you decided to quit for early retirement, health, better opportunities, or what ever you decide to tell them.

Jones: Either way, the choice is yours, You go in front of a tenure review committee and be dismissed, or you can have a sealed file, looking better by quitting.

Smith: You got a lot of gall. Forget it. You cannot get rid of me that easy.

Meeting ends...

Jones: Bill Jones submits well-documented evidence to the tenure review committee. This leads to a recommendation to the College Board of trustees that John Smith be dismissed. The College Board of trustees dismisses John Smith. The union most likely will not file a grievance, for the majority of the tenure review committee is made up of instructors. Any grievance that is filled would be lost due to Bill's thorough and detailed documentation of John Smith's lack of competency.

This case study illustrated the most difficult example of dismissing an instructor: a case of incompetence. Other options Bill Jones had in order to prevent a lengthy cost if a grievance had been filed would be to find a different position for John Smith. In many college/union contracts, as per the contract between Renton Technical College and the Renton Federation of Teachers, the college president can reassign faculty as needed to fulfill the colleges' mission.

In summary, it is best for all to improve an instructor's performance than to dismiss the instructor. The administrator can use the therapeutic counseling sessions as recommended by Steinmetz in his book *Managing the Marginal and Unsatisfactory Performer*. However, if the instructor does not respond or desire to improve, the administrator has his/her options reduced, due to tenure. Steinmetz then illustrates

that if the instructor does not conform after counseling or to motivation, the following methods can be used to get rid of the marginal or unsatisfactory instructor; De-hiring (encouraging instructor to quit), transferring to another department, retiring, promoting, or firing the instructor.

As this paper outlined, the administrator should thoroughly document all information on the poor-performing instructor and, if at all possible, counsel and motivate the instructor for improvement. If, however, the probationary or tenured instructor does not improve, the administrator should plan a course of action to dismiss the instructor, offering a chance for the instructor to quit and save face, before presenting the case before the tenure review committee.

When a dismissal case does get ugly, an administrator must have everything documented and the college must always be prepared for a potential legal battle in the courts. Terminating tenure is a serious action and should only be attempted when all efforts to work with a faculty member fail and leaving the faculty member in the classroom would be detrimental to students.

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